IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6111 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANVARMIYA J SHAIKH

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 6111 of 1994

MR DR BHATT for Petitioner No. 1

MR JM BAROT FOR MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 23/09/2004

ORAL JUDGEMENT

1. By filing instant petition under Article 226 of the Constitution, petitioner seeks to challenge the action on the part of the respondents of not allowing the petitioner to resume his duties and not granting him reinstatement in service with full back wages on termination of criminal proceedings instituted against

him in his favour with the order of acquittal by the competent criminal court and, therefore, has prayed to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to reinstate him in the job with full back wages and also directing the respondents to pay the difference of salary and all allowances to him from the date of suspension i.e., 7.2.1984 to the actual date of reinstatement in service.

2. At the time of hearing of this petition, Mr. JM Barot, learned advocate appearing on behalf of Mr. HS Munshaw, learned advocate of respondents, has tendered affidavit in reply sworn by Dr. CJ Chavda, Deputy District Development Officer, Mehsana District Panchayat, which is taken on record.

3. Mr. DR Bhatt, learned advocate of the petitioner and Mr. Barot, learned advocate of respondents, jointly submitted that after filing of this petition the petitioner has been resinated in service with effect from 1.5.1995. Therefore, so far as the prayer with respect to reinstatement of the petitioner in service is concerned, same does not survive.

4. However, Mr. DR Bhatt, learned advocate of the petitioner, has submitted that since the petitioner has filed this petition, respondent No.1 has not passed any order for regularization of his service for the period commencing from 9.2.1984 to 30.4.1995 during which he remained under suspension, as the matter is subjudiced before this Court. He further submits that one Thakarda Manaji Tasaji, who was also suspended alongwith the petitioner as both of them were prosecuted for the offences under section 409, etc., of IPC has been granted all the benefits including regularization of service of the period during which he remained under suspension by order dated 27.4.1998 since he has not filed any proceedings before any court. He, therefore, urged that appropriate directions may be issued to respondent No.1 to regularize the service of the petitioner of the period commencing from 9.2.1984 to 30.4.1995 during which he remained under suspension and to grant all the reliefs as granted in favour of Thakarda Manaji Tasaji.

5. Mr. Barot, learned advocate appearing on behalf of Mr. Munshaw, learned advocate of respondent No.1, has submitted that in view of the fact that the petitioner has been reinstated in service and another similarly situated employee - Thakarda Manaji Tasaji has been granted benefit of regularization of service of the period during which he remained under suspension vide

order dated 27.4.1998, appropriate directions may be issued in favour of the present petitioner also.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties and has also perused both the orders (i) dated 31.12.2003 passed in favour of the present petitioner and (ii) dated 27.4.1998 passed in favour of Thakarda Manaji Tasaji, copies of which are ordered to be retained on the record of this case.

7. In the facts and circumstances of the case, since the petitioner has been reinstated in service with effect from 1.5.1995, no order with respect to his reinstatement is required to be passed in his favour. However, the period commencing from 9.2.1984 to 30.4.1995 during which the petitioner remained under suspension is required to be regularized and he should be given similar treatment as is given to Thakarda Manaji Tasaji in view of the fact that respondent No.1 has regularised the period of suspension of Thakarda Manaji Tasaji, who was also suspended alongwith the petitioner, as he has not filed any proceedings before any court.

8. In aforesaid view of the matter, respondent No.1 is directed to regularize the service of the petitioner of the period commencing from 9.2.1984 to 30.4.1995 during which the petitioner was under suspension, on the petitioner filing a representation in this regard. Respondent No.1 is further directed to consider the representation and give benefit to the petitioner which was given to Thakarda Manaji Tasaji. The said exercise shall be completed within four weeks after the petitioner filing the representation.

9. With the aforesaid observations and directions, this petition shall stand disposed of. Rule is made absolute accordingly to the aforesaid extent. There shall be no order as to costs.

Direct service is permitted.

(A.M. Kapadia, J.)

(karan)